

ASSEMBLY BILL

No. 1369

Introduced by Assembly Member Gatto

February 18, 2011

An act to amend Sections 17282 and 24436.1 of, and to repeal Sections 17281 and 24436 of, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 1369, as introduced, Gatto. Personal and corporate income taxes: deductions: illegal activities.

The Personal Income Tax Law and the Corporation Tax Law allow various deductions in computing the income that is subject to the taxes imposed by those laws. Those laws, in modified conformity to federal income tax laws, disallow any deduction from gross income if that income is directly derived from, or directly tends to promote or further, illegal activities relating to lotteries, gaming, or horse racing, and other specified illegal activities.

This bill would instead disallow a deduction for expenses attributable to income derived by a taxpayer from any criminal profiteering activity, specified illegal activities relating to drug trafficking, and insurance fraud, as provided.

This bill would include a change in state statute that would result in a taxpayer paying a higher tax within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of $\frac{2}{3}$ of the membership of each house of the Legislature.

This bill would take effect immediately as a tax levy.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 17281 of the Revenue and Taxation Code
2 is repealed.

3 ~~17281. In computing taxable income, no deductions shall be~~
4 ~~allowed to any taxpayer on any of his or her gross income directly~~
5 ~~derived from illegal activities as defined in Chapter 9 (commencing~~
6 ~~with Section 319), 10 (commencing with Section 330), or 10.5~~
7 ~~(commencing with Section 337.1) of Title 9 of Part 1 of the Penal~~
8 ~~Code; nor shall any deductions be allowed to any taxpayer on any~~
9 ~~of his or her gross income derived from any other activities which~~
10 ~~directly tend to promote or to further, or are directly connected or~~
11 ~~associated with, those illegal activities. A prior, final determination~~
12 ~~by a court of competent jurisdiction of the state in any criminal~~
13 ~~proceeding or any proceeding in which the state, county, city and~~
14 ~~county, city, or other political subdivision was a party thereto on~~
15 ~~the merits of the legality of the activities of a taxpayer or~~
16 ~~predecessor in interest of a taxpayer shall be binding upon the~~
17 ~~Franchise Tax Board and State Board of Equalization.~~

18 SEC. 2. Section 17282 of the Revenue and Taxation Code is
19 amended to read:

20 17282. (a) In computing taxable income, ~~no deductions~~
21 ~~(including deductions, including deductions for cost of goods sold)~~
22 ~~sold, shall not be allowed to any taxpayer on from any of his or~~
23 ~~her gross income directly derived from illegal activities as defined~~
24 ~~in Sections 266h or 266i of, or in Chapter 4 (commencing with~~
25 ~~Section 211) of Title 8 of, Chapter 7.5 (commencing with Section~~
26 ~~311) of Title 9 of, Chapter 8 (commencing with Section 314) of~~
27 ~~Title 9 of, or Chapter 2 (commencing with Section 459), Chapter~~
28 ~~5 (commencing with Section 484), or Chapter 6 (commencing with~~
29 ~~Section 503) of Title 13 of, Part 1 of the Penal Code; any act or~~
30 ~~omission of criminal profiteering activity, as defined in Section~~
31 ~~186.2 of the Penal Code, or as defined in Chapter 6 (commencing~~
32 ~~with Section 11350) of Division 10 of the Health and Safety Code,~~
33 ~~or Article 5 (commencing with Section 750) of Chapter 1 of Part~~
34 ~~2 of Division 1 of the Insurance Code; nor shall any and deductions~~
35 ~~shall not be allowed to any taxpayer on from any of his or her gross~~
36 ~~income derived from any other activities which directly tend to~~
37 ~~promote or to further, or are directly connected or associated with,~~
38 ~~those illegal activities acts or omissions.~~

1 (b) A prior, final determination by a court of competent
2 jurisdiction of this state in any criminal proceedings or any
3 proceeding in which the state, county, city and county, city, or
4 other political subdivision was a party thereto on the merits of the
5 legality of the activities of a ~~taxpayer~~ *taxpayer*, or predecessor in
6 interest of a taxpayer, *shall be required in order for subdivision*
7 *(a) to apply and shall be binding upon the Franchise Tax Board*
8 *and the State Board of Equalization.*

9 (c) This section, *including amendments made by the act*
10 *amending this subdivision*, shall be applied with respect to taxable
11 years which have not been closed by a statute of limitations, res
12 *judicata*, or otherwise.

13 SEC. 3. Section 24436 of the Revenue and Taxation Code is
14 repealed.

15 ~~24436. In computing net income, no deductions shall be~~
16 ~~allowed to any taxpayer on any of its gross income directly derived~~
17 ~~from illegal activities as defined in Chapters 9, 10 or 10.5 of Title~~
18 ~~9 of Part 1 of the Penal Code of California; nor shall any deduction~~
19 ~~be allowed to any taxpayer on any of its gross income derived~~
20 ~~from any other activities which directly tend to promote or to~~
21 ~~further, or are directly connected or associated with, such illegal~~
22 ~~activities. A prior, final determination by a court of competent~~
23 ~~jurisdiction of this state in any criminal proceedings or any~~
24 ~~proceeding in which the state, county, city and county, city or other~~
25 ~~political subdivision was a party thereto on the merits of the legality~~
26 ~~of the activities of a taxpayer or predecessor in interest of a~~
27 ~~taxpayer shall be binding upon the Franchise Tax Board and State~~
28 ~~Board of Equalization.~~

29 SEC. 4. Section 24436.1 of the Revenue and Taxation Code
30 is amended to read:

31 24436.1. (a) In computing net income, ~~no deductions~~
32 ~~(including deductions, including deductions for cost of goods sold)~~
33 ~~sold~~, shall *not* be allowed to any taxpayer ~~on~~ *from* any of its gross
34 income directly derived from ~~illegal activities as defined in~~
35 ~~Sections 266h or 266i of, or in Chapter 4 (commencing with~~
36 ~~Section 211) of Title 8 of, Chapter 7.5 (commencing with Section~~
37 ~~311) of Title 9 of, Chapter 8 (commencing with Section 314) of~~
38 ~~Title 9 of, or Chapter 2 (commencing with Section 459), Chapter~~
39 ~~5 (commencing with Section 484), or Chapter 6 (commencing with~~
40 ~~Section 503) of Title 13 of, Part 1 of the Penal Code, any act or~~

1 *omission of criminal profiteering activity, as defined in Section*
 2 *186.2 of the Penal Code, or as defined in Chapter 6 (commencing*
 3 *with Section 11350) of Division 10 of the Health and Safety Code,*
 4 *or Article 5 (commencing with Section 750) of Chapter 1 of Part*
 5 *2 of Division 1 of the Insurance Code; ~~nor shall any~~ and deductions*
 6 *shall not* be allowed to any taxpayer on any of its gross income
 7 derived from any other activities which directly tend to promote
 8 or to further, or are directly connected or associated with, those
 9 ~~illegal activities~~ *acts or omissions.*

10 (b) A prior, final determination by a court of competent
 11 jurisdiction of this state in any criminal proceedings or any
 12 proceeding in which the state, county, city and county, city, or
 13 other political subdivision was a party thereto on the merits of the
 14 legality of the activities of a ~~taxpayer~~ *taxpayer*, or predecessor in
 15 interest of a taxpayer, *shall be required in order for subdivision*
 16 *(a) to apply and shall be binding upon the Franchise Tax Board*
 17 *and the State Board of Equalization.*

18 (c) This section, *including amendments made by the act*
 19 *amending this subdivision,* shall be applied with respect to taxable
 20 years which have not been closed by a statute of limitations, res
 21 *judicata, or otherwise.*

22 SEC. 5. This act provides for a tax levy within the meaning of
 23 Article IV of the Constitution and shall go into immediate effect.